commissioner. The representative of the Provisional Government in London is Monsieur Nabokoff, through whom His Majesty's Government conduct communications with the Archangel Provisional Government." In the case of *The Gagara,* it was held that the Esthonian National Council had been recognized and that the writ should be set aside. Affirmed in the Court of Appeal, (1919) 88 L. J. P. 101. In the case of *The Annette* and *The Dora,* it was held that the Provisional Government at Archangel had not been recognized, that in any event it was not in possession of the vessels, and accordingly that the writs should not be set aside. Admiralty, (1919) 88 L. J. P. 107.

It may well be regretted that in such a vital matter as international recognition the courts are restricted to the trivial function of construing communications solicited from the department in charge of foreign affairs. The restriction can hardly be escaped, however, as governments are now constituted. The courts themselves have indicated at least three reasons for this conclusion: in the first place, the courts are not equipped to decide a question of this nature, *Republic of Peru* v. *Peruvian Guano Co., supra; Kennett* v. *Chambers, supra;* PENFIELD, in 32 AM. L. REV. 390, 406; secondly, sound policy requires that the courts act in unison with the other departments of government in matters involving foreign relations, *Foster* v. *Globe Venture Syndicate, supra; The Hornet, supra;* and thirdly, the conduct of foreign relations is vested exclusively under the Constitution in other departments of the government, *United States* v. *Palmer, supra; Williams* v. *Suffolk Insurance Co., supra; Kennett* v. *Chambers, supra; Oetjen* v. *Central Leather Co., supra.*

It would seem, nevertheless, that international recognition ought on principle to be determined in a proceeding of a judicial nature. International law may properly define the elements essential to international personality; but, if the existence of these elements can be established, recognition ought to follow as a matter of course. Moreover, it would be a great advantage if recognition could be of general effect for all members of the international community. The national courts are not available. Why not an international jurisdiction? Why not make it possible for each community claiming recognition to have its rights determined by a tribunal constituted at The Hague from the panel of the so-called Permanent Court of Arbitration? If a real permanent court should be established under the League of Nations, why not invest it with jurisdiction to hear and determine claims to recognition? The suggestion may be regarded as somewhat utopian, but no more so, certainly, than many another that has received serious consideration of late. Such a reform, if it could be achieved, would be a great advance in the struggle to rescue international law from the confusion and intrigue of diplomacy.

E. D. D.

CONSTITUTIONALITY OF SOLDIERS' BONUS LAW.—The recent case of *State ex rel Atwood* v. *Johnson,* 175 N. W. 589, decided by the Supreme Court of Wisconsin November 17, 1919, presents a question of peculiar interest at the present time.

On July 30, 1919, the legislature of Wisconsin passed the Soldiers' Bonus

Act, which was approved by a majority of the electors of the state on September 2, 1919. (Laws of 1919, sec. 667). The act provides for the payment of a "bonus" as a token "of the appreciation of the character and spirit of the patriotic services of the soldiers, sailors, marines and nurses who served in the armed forces of the United States during the war with Germany and Austria." The bonus is payable only to those of the classes named who were residents of Wisconsin at the time of induction into service. The act is applicable to drafted as well as enlisted men. The amount of benefits to each is determined largely by the length of service, there being a payment of ten dollars for each month's service, with a minimum of fifty dollars. The act provides that the money is to be raised by a surtax on incomes and by a special tax on property. The amount of the property tax, within prescribed limits is left to the determination of the service recognition board, provided for by the act. In proceedings brought to test the constitutionality of the act it was held that the act was valid.

Several objections were urged against the validity of this act. The main ground relied upon by the contestants was that the taxation provided for is for a purpose not public. It is a well recognized principle of the law that the purpose of a tax must be public. The leading case on this subject is *Loan Association* v. *Topeka,* 20 Wall. 655, decided by the United States Supreme Court in 1874. See also *Perry* v. *Keene,* 56 N. H. 514. "A tax being in the eyes of the law an enforced contribution upon persons or property to raise money for a public purpose it follows that where this public purpose is absent, the contribution sought to be enforced cannot be justified as a tax but amounts to an attempt to take property without due process of law." 1 WILLOUGHBY, CONSTITUTIONS, 585.

There seems to be a distinction, in considering what is a public purpose, between Federal, State and Municipal laws. This distinction is recognized in 5 HAR. L. REV. 336. The distinction is also noted by Judge Cooley in his work on TAXATION, [2nd ed.] page 108, in which he says, "There may, therefore, be a public purpose, as regards the Federal Union, which may not be such as a basis for state taxation, and there may be a public purpose which upholds state taxation but not taxes which its municipalities would be at liberty to vote and collect." As the principal case confines itself necessarily to state taxation, no consideration will be noticed here concerning any similar federal taxation.

There are certain purposes for which taxes are levied which are clearly and manifestly public, as for example, taxation for highways. There are also cases in which there is a public expenditure with incidental private advantages. Taxation for assistance in constructing railroads presents a case of this type. *Perry* v. *Keene, supra.* But all taxation is not as free from the alloy of private interest as the railroad cases. The difficult case is that of an expenditure for the direct benefit of individuals with an incidental public gain. Can we say that the Soldiers' Bonus Law falls into this class? Is a token "of appreciation of the character and spirit of patriotic services" a public purpose?

When this question is considered in view of the previous cases involving

"bounties" it appears that the purpose is manifestly private and not public. Judge Cooley in *People* v. *Salem*, 20 Mich. 452, said, "A bounty law of which this is the *real nature* is void, whatever may be the pretence on which it may be enacted"—This is undoubtedly the weight of authority on questions involving bounties, or as Judge Cooley said—"of which this is the real nature." See *Feldman* v. *City Council*, 23 S. C. 57; *Weismer* v. *Douglas*, 64 N. Y. 91; *People* v. *Salem, supra; Attorney General* v. *Eau Claire*, 37 Wis. 400. It will be noted that the case of *Attorney General* v. *Eau Claire, supra*, was decided by the same court that decided the principal case. This court immediately after the close of the Civil War expressly held that raising money to pay bounties to volunteers was a public purpose. *Broadhead* v. *Milwaukee*, 19 Wis. 658. The Wisconsin court therefore has recognized a clear distinction between the ordinary case of a "bounty" and "a bounty to soldiers." If there is such distinction to what can it be due? Can it be said that the court had in mind a consideration of public policy? This is hardly a satisfactory legal explanation. Possibly we might say that the "real nature" of such a purpose is not that of a bounty. That raising money as a bonus for soldiers is a public purpose has been recognized in other cases. *Trustees of Cass Township* v. *Dillon*, 16 Ohio St. 38; *State ex rel Garrett* v. *Froelich*, 118 Wis. 129; *McCurdy* v. *Tappan*, 29 Wis. 664; *United States* v. *Hosmer*, 9 Wall. 432; *Opinion of the Justices*, 211 Mass. 608. See also 14 L. R. A. 474.

It is to be noticed in the case mentioned above that the bounties were paid to volunteers. In that respect those cases differ from the principal case. Some of the decisions make a distinction between future and past enlistments, holding that the payment of bounties to persons who have already enlisted in the service, without any contract for such bounties is not use of money for public purposes as there is no consideration therefor—*Fowler* v. *Danver*, 8 Allen 80; *Shackford* v. *Newington*, 46 N. H. 415; *Crowde* v. *Hopkinton*, 45 N. H. 9. However the bounties were held applicable to past as well as future enlistments in *Trustees of Cass Township* v. *Dillon, supra; United States* v. *Hosmer, supra; Opinion of the Justices, supra.* The basis of such distinction seems to rest upon the supposed contract relation between the state and one who enlists in the service with the bonus in view. But this difference can hardly be said to affect the validity of the legislative act for if the act was unconstitutional no contract existed. The distinction therefore seems to be without foundation.

The purpose for which taxes are levied must be primarily and directly for the public good. *Lowell* v. *Boston*, 111 Mass. 454. It can not be doubted that whether the object of a law is public or private is a judicial question and not within legislative discretion. However every presumption is in favor of the validity of such law. As the Wisconsin court expressed it in *Broadhead* v. *Milwaukee, supra*, "To justify the court in arresting the proceedings and declaring the tax void the absence of all possible public interest in the purpose for which the funds are raised must be clear and palpable to every reasonable mind." Is there an absence of "all public interest" in a question such as is presented in the principal case? Such a statute may encourage greatly the volunteer spirit, or the spirit of service in the future. It may

lead to truer patriotism in the future. The "general welfare" of the state and the country may be greatly secured and advanced. As the act declares "of the appreciation of the character and spirit of the patriotic service." Clearly this means the appreciation of the people of Wisconsin. The legislature must have intended that the showing of such "appreciation" would promote the general public good of the state. Surely it can not be said that there is an "absence of all possible public interest." On the contrary the public interest is apparent. Furthermore it would seem to be within the power of the Wisconsin legislature to determine whether claims upon the state are founded upon moral and honorable obligation and upon principles of right and justice. See *United States* v. *Realty Co.*, 163 U. S. 427. In other words, this act may be viewed in the light of a payment for past services done for and in behalf of the state. Is a definite, binding contract necessary in the first instance for the legislative body to provide ways for meeting such obligations? Clearly not. There are numerous acts of the legislature validating unenforceable contracts with the state or providing for payment of services previously rendered. Can it not then be said that the state of Wisconsin merely determined that these claims, if such they can be called, are founded "upon moral and honorable obligation and upon principles of right and justice?" Given a public object for which to tax the extent and circumstances of any particular expenditures are matters of legislative discretion, and if exercised to the undue *benefit of private persons* the remedy is political. *Lowell* v. *Boston, supra; People* v. *Salem, supra.* It seems, then, that the court in the principal case were correct in holding that upon authority and principle the object of this tax was public and not private.

It will be noticed that most of the cases cited above refer expressly to volunteers and do not include drafted men. However in Kentucky it was held that an act authorizing money to be raised as bounties for volunteers in anticipation of a draft was not constitutional as to those whom a draft would not affect. *Ferguson* v. *Laudram,* 1 Bush 548, 5 Bush 230. Furthermore in view of the immediate policy of our government in inaugurating the selective draft system without depending upon volunteers, the similar treatment of all forces, regardless of the manner in which they entered the service, the mingling in the same units of enlisted and drafted men, the same remunerations in salaries and the Federal bonus, it can hardly be understood how, in the face of such a definite military policy, a discrimination could be made against the drafted man.

Another objection raised to the validity of this act was that legislative power was unlawfully delegated to the board, in violation of the Constitution. The court was undoubtedly justified in ruling that such was not a delegation of legislative powers, as the duties of the board are purely ministerial. *United States* v. *Grimaud,* 220 U. S. 506, 55 L. Ed. 563; *Trustees of Saratoga Springs* v. *Saratoga Gas Co.,* 191 N. Y. 123, 18 L. R. A. (N.S.) 713.

For a recent case in accord with the principal case see *Gustafson* v. *Rhinow,* 175 N. W. 903, decided by the Supreme Court of Minnesota, January 9, 1920.

B. B. M.